

Honorable Judge Richard A. Jones

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MASTERS SOFTWARE, INC, a Texas Corporation,

Plaintiff,

v.

DISCOVERY COMMUNICATIONS, INC, a  
Delaware Corporation; THE LEARNING CHANNEL,  
INC, a Delaware Corporation; THE LEARNING  
CHANNEL, LLC, a Delaware Limited Liability  
Company; BARTOLO "BUDDY" VALASTRO, an  
individual,

Defendants.

Civil Action No. 2:10-CV-405

**COMBINED JOINT STATUS  
REPORT AND DISCOVERY  
PLAN**

Pursuant to FRCP 26(f) and Local Rule CR 16, the parties, through their undersigned counsel of record, jointly submit the following Status Report and Discovery Plan.

1. Statement of the Nature and Complexity of the Case

The case at hand includes claims of federal and common law trademark infringement, reverse confusion, federal unfair competition, violation of the Washington State Consumer Protection Act, and tortious interference with a contractual relationship. Defendants deny any liability and Bartolo Valastro has moved to dismiss for lack of personal jurisdiction and for failure to state a claim.

COMBINED JOINT STATUS REPORT AND DISCOVERY  
PLAN- 1  
Cause No.: 2:10-CV-405

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206-569-0314 | 206-569-0313 (F)

1 The heart of the matter involves both parties use of "Cake Boss." Plaintiff uses the  
 2 CAKEBOSS mark to represent software for home bakers for bakery business management,  
 3 online instruction in the field of baking cakes, and providing information in the field of  
 4 baking for baking enthusiasts. Defendants use *Cake Boss* as the title of a television series,  
 5 associated web content, and other products associated with the television series.

6 The parties disagree as to whether there is a likelihood of confusion. The parties'  
 7 respective positions are outlined in the papers related to the Motion for Preliminary  
 8 Injunction. Plaintiff asserts that all products of plaintiff and defendants are related to the cake  
 9 baking industry, therefore confusion is likely. Defendants assert that Plaintiff's products are  
 10 related to financial baking software while their own products are related to television and  
 11 products related to the subject matter of the television program, therefore confusion is not  
 12 likely.  
 13 likely.

14 Plaintiff filed a motion for preliminary injunction on April 29, 2010. Defendants  
 15 opposed the motion which had a Noting Date of May 28, 2010.

16 Defendant Valastro filed a Motion to Dismiss on grounds of lack of personal  
 17 jurisdiction and/or failure to state a claim for which relief can be granted on June 4, 2010.  
 18 Plaintiff opposed this motion which had a Noting Date of July 2, 2010.  
 19

## 20 2. Alternative Dispute Resolution

21 The Parties propose that mediation be employed in this case.

## 22 3. Timing of Alternative Dispute Resolution

23 Plaintiff believes that mediation should be employed at some point prior to November  
 24 1, 2010. Defendants prefer that mediation take place before September 3, 2010.  
 25

1 4. Deadline for Joining Additional Parties

2 The Parties propose that the deadline for joining additional parties be October 1, 2010.

3 5. Proposed Discovery Plan

4 A. The Parties conducted the FRCP 26(f) conference on June 23, 2010. The  
5 Parties exchanged FRCP 26(a) initial disclosures on June 30, 2010. Bartolo  
6 Valastro participated in the exchange of initial disclosures, but without waiving  
7 and while reserving all defenses and arguments contained in his motion to  
8 dismiss. The parties reserve their respective rights to supplement or amend  
9 their initial disclosures.  
10

11 B. The Parties propose that discovery be limited to issues related to the  
12 Complaint, the Answer, and the papers regarding the Motion for Preliminary  
13 Injunction. Plaintiff seeks discovery with respect to the issues related to  
14 Bartolo Valastro's Motion to Dismiss. Defendants do not agree that discovery  
15 on jurisdictional issues or other issues raised in Valastro's motion to dismiss is  
16 either warranted or appropriate. Discovery should also include matters related  
17 to experts proposed by either party. The Parties do not propose that discovery  
18 be limited in other ways or conducted in phases, but reserve their respective  
19 rights to seek such limitations on discovery or more expansive discovery as  
20 may become warranted.  
21

22 C. The Parties propose that the initial expert witness disclosures be due October 1,  
23 2010. The Parties further propose that the rebuttal expert disclosures be due  
24 November 1, 2010. The Parties propose that each party shall notify their  
25 clients, agents, and witness(es) under their control not to destroy any  
26  
27

documents or other things that are or may be evidence in the controversy.

Every six months, Parties shall remind each client, agent, and witness under their control of their obligation not to destroy potential evidence.

D. The Parties will work in good faith to minimize the costs of discovery in any way practicable. The Parties agree that any discovery disputes that cannot be resolved between counsel be resolved by judicial conference call in place of a motion to compel.

E.

i. Plaintiff does not propose the need for the Court to enter any other orders under FRCP 26(c) or Local Rule 16(b) and (c).

ii. Defendants will seek a Protective Order pursuant to FRCP 26(c) regarding confidential, proprietary or commercially sensitive information. The parties will meet and confer in an effort to agree to the scope of such an order.

iii. Both Parties propose any requests for protective orders shall be submitted to the court by July 30, 2010.

6. Discovery Completion

The Parties propose that discovery be completed by December 17, 2010.

7. Magistrate Judge

The Parties do not consent to a Magistrate Judge conducting all proceedings in this case.

8. Bifurcation

The Parties do not believe that bifurcation is necessary.

1 9. Pretrial Statements and Orders

2 The Parties agree to observe the requirements of the Local Rules regarding the filing  
3 of pretrial statements and orders.

4 10. Other Suggestions

5 Defendants propose mediation within the next two months as a means for shortening  
6 or simplifying the case.

7 Plaintiff does not object to mediation.

8  
9 11. Trial Date

10 The Parties believe that the case will be ready for trial in April 2011.

11 12. Trial Type

12 Plaintiff has requested a trial by jury.

13 Defendants do not object to a trial by jury.

14  
15 13. Length of Trial

16 The Parties estimate the length of trial to be 10 days. The parties reserve their  
17 respective rights to revise this estimate in the event further fact discovery and expert  
18 discovery indicate the scope of the trial will be more extensive than presently anticipated.

19 14. Trial Counsel

20 Trial counsel for Masters Software, Inc. will be:

21  
22 Kathleen D. Long, WSBA No. 38317  
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28 Trial Counsel for all Defendants will be:

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19 15. Service

20 All Defendants have been served.

21 16. Scheduling Conference

22 The Parties do not request a scheduling conference prior to a scheduling order being  
23 entered in the case.

24 Dated this 7<sup>th</sup> day of July, 2010.

25 Respectfully submitted,

26 Law Office of K.D. Long, PLLC

27 By Kathleen D. Long  
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